



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Authorize City Manager to Execute Standard Fee Payment Agreements

MEETING DATE: September 17, 1997

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute standard fee payment and improvement agreements for development impact mitigation fees, including wastewater capacity fees.

BACKGROUND INFORMATION: The City's development policies and ordinances provide for various capital facility fees to be paid at the time of development. As an economic development incentive, the City Council has approved various fee deferral arrangements, allowing for the fees to be paid over time. As our economic development efforts become more successful, the number of such arrangements is increasing.

These agreements have been individually approved by the City Council. This arrangement requires staff time to prepare the Council report and, more importantly, can lead to project delay. Therefore, staff is recommending that approval of such agreements be delegated to the City Manager. The City Manager, through the Economic Development Coordinator, shall determine eligibility for commercial and industrial projects. This eligibility also applies to the amount to be deferred. For example, if fees are being used to pay for improvements being built directly by the project, that portion may not necessarily be deferred. Residential projects are not eligible unless specifically approved by the City Council.

Although the approval refers to "standard" agreements, there are some variables for each project. To remain flexible and accommodating to new businesses, staff has prepared the following standard elements to be incorporated into these fee payment agreements; however, additional elements may be necessary depending on project details.

1. The term shall be from one to seven years.
2. For terms of one year or less, a lump sum administrative fee, as determined by the City Manager, shall be added (the amount used in recent agreements has been \$100).
3. For terms over one year, interest shall be charged. The interest rate shall be fixed at 1% above the current Local Agency Investment Fund (LAIF) rate (the LAIF interest paid to the applicable fee fund and the 1% portion paid to the General Fund for administration).
4. The payment method shall be monthly, quarterly, semi-annually or annually, as arranged. (One typical arrangement for wastewater capacity fees has been to adjust the monthly service charge to include this fee.)

APPROVED: _____

H. Dixon Flynn
H. Dixon Flynn -- City Manager

5. The fees apply to the property, not the tenant (although the agreement may be with a tenant) and may be recorded.
6. Delinquent payments are handled per the City Code.
7. If the business leaves with an unpaid balance, the property will not have credit for the unpaid portion and any subsequent use will be subject to applicable fees.
8. The agreement shall be approved as to form by the City Attorney.

The recommended approval also provides for cases in which a project needs a public improvement agreement. These standard agreements spell out the developer's and City's responsibilities regarding installation of public improvements. Since the basics of these agreements are standardized, a copy is attached as Exhibit A. These agreements often involve impact fees, payment for work by the City for the developer, payment for work by the developer for the City, and miscellaneous fees and credits. The City Manager's authority to execute these improvement agreements is limited to those in which the net cost of all fees and payments is \$50,000 or less. For higher amounts, City Council authorization will be requested.

FUNDING: Not applicable.



Jack L. Ronsko
Public Works Director

Prepared by Richard C. Prima, Jr., City Engineer

JLR/RCP/lm

Attachment

cc: Economic Development Coordinator
Associate Civil Engineer - Development Services
Water/Wastewater Superintendent

IMPROVEMENT AGREEMENT
for the
PUBLIC IMPROVEMENTS
of

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City", and _____, hereinafter referred to as "Developer".

RECITALS:

#1 (For final subdivision map, use this section)

Developer has presented to City for approval a final subdivision map, hereinafter called "map", entitled "_____". The map was filed with the Public Works Director for presentation to the City Council of the City for its approval, which map is hereby referred to and incorporated herein;

Developer has requested approval of the map prior to the construction and completion of public improvements, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision, hereinafter called "project", all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of project, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director.

Council of the City will adopt a resolution approving map and accepting the dedications therein offered on condition that Developer first enter into and execute this agreement with City and meet the requirements of said resolution; and

This agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 15 and 16 of the Lodi City Code.

#2 (For parcel map, use this section)

Developer has presented to City for approval a final parcel map, hereinafter called "map", and necessary street and easement dedications shown thereon, or provided under separate instrument.

Developer has requested approval of the map prior to the construction and completion of public improvements, including all streets, highways or public ways and public utility facilities which are a part of or appurtenant to the development, hereinafter called "project", all in accordance with and as required by the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of project, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director.

Council of the City will accept the dedications offered on condition that Developer first enter into and execute this agreement with City; and

This agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 15 and 16 of the Lodi City Code.

#3 (For issuance of building permit, use this section)

Developer has applied to the City for issuance of a building permit allowing Developer to build on that parcel known as _____.

Developer has requested issuance of the building permit prior to the construction and completion of public improvements as required as a condition of approval of _____, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the development, hereinafter called "project", all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of project, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director.

The City will issue to Developer the building permit on the condition that Developer first enter into and execute this agreement with City and meet other City code requirements pertaining to building permit issuance.

This agreement is executed pursuant to the provisions of Title 15 of the Lodi Municipal Code.

NOW THEREFORE, for and in consideration of the acceptance of the dedications offered, and in order to insure satisfactory performance by Developer of Developer's obligations under State law and City code, the parties agree as follows:

1. Performance of Work by Developer

Developer will do and perform, or cause to be done and performed at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of the Public Works Director, all of the work and improvements as shown on the approved improvement plans for the project, Drawing No.(s) _____, which are on file in the Public Works Department.

The Developer shall also perform or cause to be performed the following items which are not shown on the improvement plans:

- A. Street light installation and connection to City system
- B. Natural gas line installation
- C. Telephone line installation
- D. Electrical system
- E. (list others as appropriate)

2. Development Changes

Developer shall also perform all work and furnish all materials necessary to comply with any changes required by the Public Works Director, which, in his opinion, are necessary or required to complete the work in conformance with City Standards or are the result of changed conditions.

3. Performance of Work by City

(Use next paragraph for subdivision and parcel maps.)

Prior to the approval of the final map by the City, it is agreed that the Developer shall deposit with the City the amount of money shown as the "Developer Cost" on Billing Schedule attached hereto and by this reference made a part hereof.

(Use next paragraph for issuance of building permits.)

Prior to the issuance of the building permit by the City, it is agreed that the Developer shall deposit with the City the amount of money shown as the "Developer Cost" on Billing Schedule attached hereto and by this reference made a part hereof.

From payments made under Billing Schedule, Developer elects to have the City perform or install or cause the installation of the following items:

- A. Street name signs
- B. Street seal coat
- C. Fire hydrant markers
- D. (list others as appropriate)

Developer shall also pay all additional costs for work performed by City forces deemed by the Public Works Director necessary to complete the work under this agreement in conformance with City Standards.

4. Development Impact Mitigation Fees

Development Impact Mitigation Fees for water, wastewater, street and storm drain facilities are being paid as part of this agreement. Fees for police, fire, parks and recreation and general City facilities shall be deferred until the project is ready for acceptance. Acceptance of the public improvements will be contingent upon payment of the deferred fees. The amounts shown in the agreement for these deferred fees are valid for one year from the date of City Council approval of the agreement. After one year, these deferred fees are subject to adjustment to the then-current fee schedule.

5. Work; Time for Commencement and Performance

Developer shall, within 365 calendar days from the date of this agreement, perform or cause to be performed all work and/or improvements described under this agreement. At least 15 calendar days prior to the commencement of work hereunder, Developer shall notify the Public Works Director of the date fixed by Developer for commencement thereof so that City can provide inspection services.

6. Time Extension

Time is of the essence of this agreement. The City may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Developer's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

The deferred Development Impact Mitigation Fees are subject to change one year after the approval of the agreement. A time extension does not eliminate a change in these fees.

7. Record Drawings and Certifications

Prior to acceptance of the project improvements, the Developer shall have (installed and in place all survey monuments as shown on the Map and) provided record drawings and certifications as described in the City of Lodi Public Improvement Design Standards. *(For building permits, the section in parenthesis can be omitted.)*

8. Permits: Compliance with Law

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

9. Superintendence by Developer

Developer shall give personal superintendence to the work on said improvement, or have a competent agent, foreman or superintendent, satisfactory to the Public Works Director, on the work at all times during progress, with authority to act for Developer.

10. Inspection by City

Developer shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work. Inspections will be provided during normal working hours. Developer will be billed for inspections on work performed on weekends, holidays and overtime.

11. Contract Security

Concurrently with the execution hereof, Developer shall furnish Improvement Security of at least 100% of the estimated cost of public improvements plus deferred fees and engineering costs of surveying, record drawings and certifications as security for the faithful performance of this agreement and repair or replacement of defective work under Paragraph 16 following; and an amount equal to at least 50% of the above costs as security for the payment of all persons performing labor and furnishing materials in connection with this agreement as more fully described in the State Subdivision Map Act.

The City has determined these security amounts to be as follows:

Faithful Performance \$ _____
Labor and Materials \$ _____

12. Hold-Harmless Agreement

Developer hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's or Developer's contractors', subcontractors', agents' or employees' operations under this agreement, whether such operations be by Developer or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors.

Developer agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

- A. That City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in Paragraph 13 hereof.
- B. That the aforesaid hold-harmless agreement by Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

13. Developer's Insurance

Developer shall not commence work under this agreement until Developer shall have obtained all insurance required under this paragraph, nor shall Developer allow any contractor or subcontractor to commence work on Developer's contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Compensation Insurance

Developer shall maintain, during the life of this agreement, Worker's Compensation Insurance for all Developer's employees employed at the site of improvement, and in case any work is sublet, Developer shall require any contractor or subcontractor similarly to provide Worker's Compensation Insurance for all contractors' or subcontractors' employees, unless such employees are covered by the protection afforded by Developer. Developer hereby indemnifies City for any damage resulting to it from failure of either Developer or any contractor or subcontractor to take out or maintain such insurance.

B. Comprehensive General and Automobile Insurance

Developer shall take out and maintain during the life of this agreement such insurance as shall insure City, its elective and appointive boards, commissions, officers, agents and employees, Developer and any contractor or subcontractor performing work covered by this agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise on the subdivision property, including any public streets or easements, from Developer's or any contractors' or subcontractors' operations hereunder, whether such operations be by Developer or any contractor or subcontractor or by anyone directly or indirectly employed by either Developer or any contractor or subcontractor, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

\$1,000,000 Bodily Injury - Each Occurrence/Aggregate
\$1,000,000 Property Damage - Each Occurrence/Aggregate
or
\$1,000,000 Combined Single Limit

2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury - Each Person
\$1,000,000 Bodily Injury - Each Occurrence
\$1,000,000 Property Damage - Each Occurrence
or
\$1,000,000 Combined Single Limit

Developer must have comprehensive automobile liability only if Developer's vehicles are used on-site.

NOTE: Developer agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

"Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

A. Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents and employees as additional named insured insofar as work performed by the insured under written contract with the City of Lodi. This endorsement shall be on the form furnished by the City and shall be included with Developer's policies.

B. Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

C. Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

14. Evidence of Insurance

Developer shall furnish City, concurrently with the execution hereof, with satisfactory evidence of the insurance required and evidence that each carrier is required to give City at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this agreement. The address of the City of Lodi must be shown on the certificate of insurance, i.e., City of Lodi, 221 West Pine Street, Lodi, CA 95240.

15. Title to Improvements

Title to, and ownership of, all public improvements constructed hereunder by Developer shall vest absolutely in City upon completion and acceptance of such public improvements by City.

16. Repair or Reconstruction of Defective Work

If, within a period of 1 year after final acceptance by City of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this agreement, including the mitigation measures for dust and erosion control, fails to fulfill any of the requirements of this agreement plans and specifications referred to herein, Developer and Developer's surety shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer or Developer's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Developer shall pay to City the actual cost of such repairs plus 15% for administration and overhead costs.

17. Repair or Replacement of City-owned Bypass Meter Assemblies

The Developer is required by the City to install bypass meter assemblies in conjunction with the installation of water mains in the City of Lodi. The City will supply these assemblies upon receipt of a deposit in the amount of \$5,000.00 for each assembly required. The purpose of the deposit is to guarantee the return of the assembly in good condition and fulfillment of the other obligations shown in the City's Policies and Procedures entitled "Metering Water Usage of New Water Mains Requiring Temporary Bypasses", a copy of which is attached hereto and made a part hereof.

18. Mud, Debris, Dust and Erosion

Developer agrees and covenants not to permit mud or other debris to be tracked from the construction site or elsewhere onto City or County streets or onto private property without express permission. Developer further agrees not to cause damage to City or County streets.

Should any mud or debris be deposited in City or County streets or any damage caused to City or County streets, the Developer shall have the same removed or repaired forthwith, and if not removed or repaired upon notice within a specified time, the City shall cause the same to be removed or repaired and the Developer shall be charged for the cost of said removal or repairs.

The Developer, Developer's contractor and/or agents shall be responsible so no dust or erosion problems are created during construction, including installation of telephone, electrical, cable television and gas facilities. Developer's responsibility for dust and erosion control shall extend to include a period of one year from the date of final acceptance by the City of the work performed under this agreement.

If a dust or erosion problem arises during development or within a period of one year from the date of final acceptance by the City of the work performed under this agreement, including but not limited to installation of telephone, electrical, cable television, and/or gas facilities, and has not, after notice, been abated by Developer within a specified period of time, the City shall cause the same to be controlled, and the Developer shall be charged with the cost of said control.

19. Fire Protection During Construction

Fire protection facilities approved by the Fire Chief, including all-weather access road and an approved water supply capable of supplying the required fire flow, shall be installed and made serviceable in accordance with the City fire code prior to and during the time of building construction. The above may be modified when alternate methods of protection approved by the Fire Chief are provided.

20. Protection of Existing Improvements

Damage to any existing improvements or private or public utility lines installed or being installed which damage occurs during the onsite and offsite construction required of Developer shall be the absolute responsibility and liability of Developer. In other words, it shall be the Developer's responsibility to pay for damage to existing improvements and public or private utilities within the development. Damage to any existing facilities outside the limits of the subdivision damaged as part of the construction of the required subdivision improvements is also the Developer's responsibility.

21. Dwelling Occupancy

The City will not allow occupancy of any building or structure within the project until all deferred fees have been paid, public improvements have been approved and accepted by the Public Works Department per established City policy and other requirements of the City codes have been met. If building is started prior to acceptance of the improvements, it is the Developer's responsibility to inform all prospective purchasers that occupancy will not be permitted until said deferred fees are paid and public improvements are so accepted.

22. Developer Not Agent of City

Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this agreement.

23. Notice of Breach and Default

If Developer refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer or any of

Developer's contractors, subcontractors, agents or employees, should violate any of the provisions of this agreement, the Public Works Director or City Council may serve written notice upon Developer and Developer's surety of breach of this agreement, or any portion thereof, and the default of Developer.

24. Breach of Agreement; Performance by Surety or City

In the even of any such notice, Developer's surety shall have the duty to take over and complete the work and the improvements herein specified; provided however, that if the surety, within five days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within 5 days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any excess cost or damage occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

25. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Jack L. Ronsko
Public Works Director
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

Notices required to be given to Developer shall be addressed as follows:

Notices required to be given to Developer's agent shall be addressed as follows:

Notices required to be given to surety shall be addressed as follows:

Provided that either party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

26. Execution

In Witness Whereof, Developer and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

DEVELOPER(S)

Date

(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

By: _____
H. Dixon Flynn, City Manager

Date

ATTEST:

Alice M. Reimche, City Clerk

Date

APPROVED AS TO FORM:

Randall A. Hays, City Attorney